

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. DAVIS, a.k.a.,
MICHAEL EL. HOLMES,

Plaintiff,

No. CIV S-04-1390 LKK EFB P

vs.

TERESA S. SCHWARTZ, et al.,

Defendants.

ORDER

Plaintiff is a prisoner without counsel seeking relief pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff's December 20, 2004, amended complaint, which defendant answered on June 26, 2006. On July 24, 2006, plaintiff filed an amended complaint without complying with the requirements of Rule 15(a) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.").

"A party may amend the party's pleading as a matter of course at any time before a responsive pleading is served . . .," after which, "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Because defendant filed an answer on June 26, 2006, plaintiff must first move for leave to amend or obtain the written stipulation of the defendants prior to filing an amended complaint. Plaintiff has done neither.

1 Accordingly, it is hereby ORDERED that plaintiff's July 24, 2006, amended complaint is
2 disregarded and the Clerk of the Court shall make a notation to that effect on the docket.

3 Dated: November 1, 2006.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE

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